

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FORT JAMES CORPORATION,)	
FORT JAMES OPERATING COMPANY,)	
FORT JAMES FIBER COMPANY,)	
FORT JAMES INTERNATIONAL)	
HOLDINGS LTD., and)	
MCGUIREWOODS, L.L.P.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 02-1612-SLR
)	
JEFFERY H. BECK, and)	
CROWN PAPER LIQUIDATING)	
TRUST,)	
)	
Defendants.)	

Thomas C. Grimm, Esquire and Rodger D. Smith, Esquire of Morris, Nichols, Arsht & Tunnell, Wilmington, Delaware. Counsel for Plaintiffs. Of Counsel: Joseph F. Coyne, Jr., Esquire, Michelle Sherman, Esquire and Kenneth A. O'Brien, Jr., Esquire of Sheppard, Mullin, Richter & Hampton LLP, Los Angeles, California. James C. Krieg, Esquire and Stan R. Roman, Esquire of Kreig, Keller, Sloan, Reilley & Roman, LLP, San Francisco, California.

Daniel B. Rath, Esquire and Rebecca L. Butcher, Esquire of Klett Rooney Lieber & Shorling, Wilmington, Delaware. Counsel for Defendants. Of Counsel: Leo R. Beus, Esquire and Richard R. Thomas, Esquire of Beus Gilbert PLLC, Scottsdale, Arizona.

MEMORANDUM OPINION

Dated: February 12, 2003
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

On October 10, 2002 plaintiffs filed this action in the Delaware Court of Chancery seeking a declaratory judgment, an injunction and specific performance of a certain 1998 Option and Settlement Agreement. Defendants filed a notice of removal to this court on November 5, 2002 claiming this court has original subject matter jurisdiction under 28 U.S.C. §§ 1332 and 1334(b). (D.I. 1) Currently before the court are plaintiffs' motion to remand and defendants' motion to dismiss. (D.I. 11, 2)

II. DISCUSSION

Defendants' answering brief concedes that jurisdiction is not proper under 28 U.S.C. § 1332. (D.I. 15 at 17 n.4) Thus, the only issue before this court is whether jurisdiction is proper under 28 U.S.C. § 1334(b). Section 1334(b) states:

Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

28 U.S.C. § 1334(b). The parties do not dispute that this action is "related to" a bankruptcy proceeding under title 11 in the United States Bankruptcy Court for the Northern District of California. Plaintiffs argue that the case should be remanded to

Chancery pursuant to 28 U.S.C. § 1452(b). Section 1452(b), entitled "Removal of claims related to bankruptcy cases," states:

The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title.

28 U.S.C. 1452(b).

The key issue is whether remand in this action is appropriate based on any equitable ground. While this district has previously noted a number of factors to consider regarding a motion to remand under section 1452(b),¹ defendants assert only one. According to defendants, remand will result in a waste of

¹In Lone Star Industries, Inc. v. Liberty Mut. Ins., 131 B.R. 269 (D. Del. 1991), the court noted that the equitable factors that may be considered in determining whether to remand include:

1. the court's duty to decide matters properly before it;
2. plaintiff's choice of forum as between state and federal courts;
3. the nature of the claim or claims, that is, whether purely state law matters which could be better addressed by the state court are involved;
4. prejudice to involuntarily removed parties;
5. comity considerations;
6. economical and/or duplicative use of judicial resources; and
7. effect a remand decision would have on the efficient and economic administration of the estate.

Id. at 273.

judicial resources because the Delaware Court of Chancery lacks subject matter jurisdiction over plaintiffs' claims.

Defendants cite El Paso Natural Gas v. TransAmerican Natural Gas Corp., 669 A.2d 36 (Del. 1995), for the proposition that the Delaware Court of Chancery lacks subject matter jurisdiction. Defendants, however, cite no authority for the proposition that this federal court is competent to decide the jurisdiction of the Delaware Court of Chancery. The jurisdiction of the Delaware courts is a matter that must be decided by the Delaware state courts including the Delaware Supreme Court - not the federal district court. Cf. Bromwell v. Michigan Mut. Ins. Co., 115 F.3d 208, 214 (3d Cir. 1997) ("Whether the matter is justiciable under state law is a matter for the state court to decide.").

Other factors weigh in favor of remand. The plaintiffs' choice of forum is the state court. The dispute involves a state law contract claim. Comity requires remand to the state court. Defendants have not presented any argument (except the waste of judicial resources argument) weighing in favor of this court maintaining jurisdiction over this action.

III. CONCLUSION

Defendants have only argued that judicial resources would be wasted by remanding the case to the Delaware Court of Chancery. This court finds it inappropriate to determine the extent of the jurisdiction of the Delaware Court of Chancery and defendants have provided no other basis for denying plaintiffs' motion for remand. Thus, plaintiffs' motion to remand is granted. Defendants' motion to dismiss is denied as moot. An appropriate order shall issue.

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Defendants.)	

O R D E R

At Wilmington, this 12th day of February, 2003, consistent
with the opinion issued this same day;

IT IS ORDERED that:

1. Plaintiffs' motion to remand (D.I. 11) is granted.
2. Defendants' motion to dismiss (D.I. 2) is denied as
moot.

Sue L. Robinson
United States District Judge